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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,987	10/12/2001	Raymond Clarke	10621-3	4161
7:	590 06/13/2003			
Sheldon & Mak			EXAMINER .	
9th Floor 225 South Lake			RHEE, JANE J ART UNIT PAPER NUMBER	
Pasadena, CA	91101			
			1772	10
		•	DATE MAILED: 06/13/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

			451
	Application No.	Applicant(s)	
Advisory Action	09/976,987	CLARKE ET AL.	
, . ,	Examiner	Art Unit	
	Jane J Rhee	1772	
The MAILING DATE of this communication app	pears on the cover sheet w	ith the correspondence add	ress
THE REPLY FILED 5/27/03 FAILS TO PLACE THIS AFT Therefore, further action by the applicant is required to a final rejection under 37 CFR 1.113 may only be either: (condition for allowance; (2) a timely filed Notice of Appe Examination (RCE) in compliance with 37 CFR 1.114.	avoid abandonment of this 1) a timely filed amendme	s application. A proper reply ent which places the applica	ition in
PERIOD FOR R	REPLY [check either a) or	b)]	
a) The period for reply expiresmonths from the mail			
b) The period for reply expires on: (1) the mailing date of this no event, however, will the statutory period for reply expire ONLY CHECK THIS BOX WHEN THE FIRST REPLY WA 706.07(f).	e later than SIX MONTHS from	the mailing date of the final rejection	on.
Extensions of time may be obtained under 37 CFR 1.136(a). The fee have been filed is the date for purposes of determining the period fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of (2) as set forth in (b) above, if checked. Any reply received by the Of timely filed, may reduce any earned patent term adjustment. See 37	I of extension and the correspor of the shortened statutory period fice later than three months afte	nding amount of the fee. The appr I for reply originally set in the final	opriate extension Office action; or
1. A Notice of Appeal was filed on Appellant 37 CFR 1.192(a), or any extension thereof (37 CF		•	
2. The proposed amendment(s) will not be entered by	because:		
(a) X they raise new issues that would require furth	ner consideration and/or s	search (see NOTE below);	
(b) they raise the issue of new matter (see Note	below);		
(c) they are not deemed to place the application issues for appeal; and/or	in better form for appeal	by materially reducing or sir	nplifying the
(d) they present additional claims without cance	eling a corresponding num	ber of finally rejected claims	s.
NOTE:			
3. Applicant's reply has overcome the following rejection	ction(s):		
4. Newly proposed or amended claim(s) would canceling the non-allowable claim(s).	d be allowable if submitte	d in a separate, timely filed	amendment
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for application in condition for allowance because:		en considered but does NO	Γ place the
6. The affidavit or exhibit will NOT be considered be raised by the Examiner in the final rejection.	cause it is not directed SC	DLELY to issues which were	newly
7. For purposes of Appeal, the proposed amendmen explanation of how the new or amended claims v			nd an
The status of the claim(s) is (or will be) as follows	:		
Claim(s) allowed:			
Claim(s) objected to:			
Claim(s) rejected: <u>1-8,11,13,15,16,20-26 and 28-31</u>			
Claim(s) withdrawn from consideration:			

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10. ☑ Other: see attachment

8. The proposed drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

Application/Control Number: 09/976,987 Page 2

Art Unit: 1772

ADVISORY ACTION

1. Newly submitted claims 32 and 33 raise new issues that will require further consideration and search. The new issue is the table of pore sizes and percent of pores larger than pore size.

2. The terminal disclaimer is not proper and has not been accepted because the attorney is not of record in the oath/declaration or a separate paper filed appointing a new or associate attorney nor is there a customer number.

Response to Arguments

3. Applicant's arguments filed 5/27/03 have been fully considered but they are not persuasive.

In response to applicant's argument that Examiner believes there is an unobvious difference between the microporous films prepared by the process defined in claim 1 and by the process disclosed in Antoon, the applicant uses a different process than that of Antoon, however, what process the applicant uses does not make the product patentably distinct from Antoon. A structural difference between the prior art and applicant's invention is the determining factor of patentable distinction.

In response to applicant's argument that Examiner believes that the applicant should provide evidence for the criticality of the average pores size less than 0.24, the prior art, Antoon discloses a microporous polymeric film and a polymeric coating however fails to disclose a pore size. The pore size is the only structural difference between the present invention and the prior art Antoon, therefore, Examiner's thoughts were that the novelty of the present invention may lie on the pore size hence the

Application/Control Number: 09/976,987

Art Unit: 1772

criticality of the average pore size was inquired. However, applicant's stated in their response on page 16, "applicant's have not argued, and are not now arguing, that the average pore size of less than 0.24 micron distinguishes the claimed invention from Antoon," Examiner realizes that the pore size less than 0.24 micron wasn't a very significant factor in the present invention.

In response to applicant's argument that it is unclear to what the Examiner meant by "recited properties", Examiner meant that the recited properties are the average pore size and the densities of the pores.

In response to applicant's argument of how the Examiner can maintain the statement that the gas permeable membrane of Antoon is identical to or only slightly different than the gas permeable membrane prepared by the method of the claim because both gas permeable membrane have a microporous polymeric film and a polymeric coating on the microporous polymeric film, both have an oxygen permeance of at least 775,000ml/m2.atm.24hrs and a CO2/oxygen permeability ratio of at least 1.5" as required by applicant's claim 1 in view of Clarke's declaration that states that the OTR and R ratio of a gas permeable membrane can vary widely above the stated minimum values and this variation can result from the use of microporous films and/or polymeric coating which differ from each other, even when gas-permeable membranes have the same OTR and R ratio, they can be based on substantially different microporous films and/or substantially different coatings and even when the polymeric coating is the same, gas permeable membranes based on different microporous films can have OTR and R values which are greater than the stated minimum values, but

Application/Control Number: 09/976,987

Art Unit: 1772

which are widely different from each other, Antoon discloses the same gas permeable membrane made from polypropylene (col. 3 lines 61) and the same polymeric coating poly(dimethylsiloxane) desired by the applicant wherein the oxygen permeance is at least 775,000ml/m2.atm.24hrs and a CO2/oxygen permeability ratio of at least 1.5" therefore, the 35 U.S.C. 102 rejection is maintained.

In response to applicant's argument that the Examiner does not provide any reason or evidence of the relationship between the size and distribution of the pores in the microporous film, and the OTR and R ratio of a membrane produced by coating the microporous film with a polymer, Antoon teaches that the silicone coated film must be selected to have a permeability sufficient to allow the type of control required within a reasonable time and the microporous sheet can be prepared by casting a sheet of a mixture of the polymer highly loaded with a filler material wherein the degree of permeability that results is a function of the amount of filler in the polymer wherein the particle size of the filler determines the size of the pores (col. 4 lines 43- col. 5 lines 1-4).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Application/Control Number: 09/976,987

Art Unit: 1772

Page 5

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jane Rhee June 10, 2003

SUPERVISORY PATENT EXAMINER